

No. 12697

United States  
Court of Appeals  
for the Ninth Circuit.

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HARCRAFT CO., a Corporation,

Appellant,

vs.

PAPER CONTAINER MANUFACTURING CO.,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Central Division.

FILED

DEC - 7 1960



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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

HAROLD LARSON,  
FLEMING, ROBBINS & TINSMAN,  
210 West Seventh St.,  
Los Angeles 14, Calif.

For Appellee:

SHEPPARD, MULLIN,  
RICHTER & BALTHIS,  
458 S. Spring St.  
Los Angeles 13, Calif.

In The United States District Court for  
the Southern District of California  
Central Division

No. 11432-Y

HARCRAFT CO., a Corporation,  
Plaintiff,  
vs.

PAPER CONTAINER MANUFACTURING CO,  
a Corporation,  
Defendant.

### PETITION FOR REMOVAL

To the Honorable United States District Court for  
the Southern District of California, Central  
Division:

Your petitioner, Paper Container Manufacturing  
Co., a corporation, organized and existing under and  
by virtue of the laws of the State of Illinois, re-  
spectfully shows to this Honorable Court:

#### I.

That your petitioner is the defendant in the above-  
entitled action which has been commenced in the  
Superior Court of the State of California in and  
for the County of Los Angeles, said action being  
number 561656; that a copy of the summons and  
complaint in the above-entitled matter was served  
upon the statutory agent of your petitioner on the  
6th day of April, 1950, in the County of Los An-  
geles, and that your petitioner has not yet appeared

in answer to the summons and complaint so served upon it, or filed any pleading in said action, and that twenty (20) days after service of process upon your petitioner have not expired.

## II.

That said petitioner files its petition for removal of said cause from the aforesaid Superior Court, in which it is now pending, to the United States District Court for the Southern District of California, Central Division, held in the City of Los Angeles, State of California.

## III.

That the said action commenced has been commenced as aforesaid and that said action is a civil action of which the United States District Court has original jurisdiction; that in the said action Harcraft Co., a corporation, as plaintiff seeks to recover a judgment from the defendant, petitioner herein, for a sum of money alleged to be due under an alleged conditional sales contract averred to have been entered into between the plaintiff and defendant, and prays damages in the amount of Thirteen Thousand Eight Hundred Seventy-three and 28/100 Dollars (\$13,873.28), together with such other alleged additional sums as may become due and payable under said alleged conditional sales agreement subsequent to the filing of said complaint.

## IV.

That petitioner, *Paper Container Manufacturing Co.*, a corporation is a corporation organized and

existing under and by virtue of the laws of the State of Illinois; that said Paper Container Manufacturing Co., a corporation, was at all times mentioned in the complaint, and now is, a resident and citizen of the State of Illinois.

## V.

That said complaint alleges that plaintiff, Harcraft Co., a corporation, is a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business in the City of Los Angeles, State of California; that your petitioner is informed and believes and therefore alleges that plaintiff, Harcraft Co., a corporation, was and now is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the State of California, and is a resident and citizen of the State of California.

## VI.

That the controversy herein is now and at the time of the commencement of said suit was one wholly between citizens of different states, to wit, plaintiff herein, a citizen and resident of the County of Los Angeles, State of California, and your petitioner herein, a corporation organized and existing under and by virtue of the laws of the State of Illinois and a citizen and resident of the State of Illinois; that as aforesaid at the time of the commencement of said suit, your petitioner was and

still is a citizen and resident of the State of Illinois and a non-resident of the State of California.

### VII.

That the matter in dispute exceeds the sum of Three Thousand Dollars (\$3,000.00), exclusive of interest and costs, to wit the sum of Thirteen Thousand Eight Hundred Seventy-three and 28/100 Dollars (\$13,873.28), being the amount of damages claimed by the plaintiff from the defendant, petitioner herein.

### VIII.

Your petitioner herein files and offers a good and sufficient bond under the statutes in such cases made and provided, conditioned as the law directs that your petitioner will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that this case was not removable or was improperly removed.

### IX.

That there are attached to this petition a copy of all process and pleadings and orders served upon your petitioner herein.

PAPER CONTAINER  
MANUFACTURING CO.,

By HENRY F. PRINCE,

FREDERIC H. STURDY,

By /s/ FREDERIC H. STURDY,

Attorneys for Defendant and Petitioner Paper Container Manufacturing Co., a Corporation.

*Harcraft Co., etc., vs.*

GIBSON, DUNN & CRUTCHER,  
By /s/ FREDERIC H. STURDY,  
Of Counsel.

State of California,  
County of Los Angeles—ss.

Frederic H. Sturdy, being first duly sworn, on behalf of the defendant, Paper Container Manufacturing Co., a corporation, in the above-entitled matter, says:

That he has read the foregoing petition for removal and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true; that the officers of said defendant are absent from the County of Los Angeles where its said attorneys reside and that the affiant is one of the attorneys for the defendant, Paper Container Manufacturing Co., a corporation, and is a member of the firm of Gibson, Dunn & Crutcher, which firm is counsel for the said defendant, and he therefore makes this verification in behalf of said defendant.

/s/ FREDERIC H. STURDY.

Subscribed and sworn to before me this 13th day of April, 1950.

[Seal] /s/ ELLEN WERTZ,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 29, 1950.

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 561656

HARCRAFT CO., a Corporation,

Plaintiff,

vs.

PAPER CONTAINER MANUFACTURING CO.,  
a Corporation,

Defendant.

SUMMONS

Action brought in the Superior Court of the County  
of Los Angeles, and Complaint filed in the Of-  
fice of the Clerk of the Superior Court of said  
County.

The People of the State of California Send Greet-  
ings to:

Paper Container Manufacturing Co., a corpora-  
tion, Defendant.

You are directed to appear in an action brought  
against you by the above-named plaintiff in the  
Superior Court of the State of California, in and  
for the County of Los Angeles, and to answer the  
Complaint therein within ten days after the service  
on you of this Summons, if served within the County  
of Los Angeles, or within thirty days if served else-  
where, and you are notified that unless you appear  
and answer as above required, the plaintiff will  
take judgment for any money or damages demanded  
in the Complaint, as arising upon contract, or will

apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 28th day of June, 1949.

L. E. LAMPTON,  
County Clerk and Clerk of the Superior Court of  
the State of California, in and for the County  
of Los Angeles.

[Seal] /s/ By K. MEACHEM,  
Deputy.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be **in writing, in form** pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk.

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 561656

HARCRAFT CO., a Corporation,

Plaintiff,

vs.

PAPER CONTAINER MANUFACTURING CO.,  
a Corporation,

Defendant.

## COMPLAINT (For Money)

Comes now Plaintiff, Harcraft Co., and complains of defendant and for cause of action alleges:

### I.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California with its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

### II.

That plaintiff is informed and believes and, therefore alleges that the defendant is an Illinois corporation, duly authorized to transact business in the State of California and transacting business in the City of Los Angeles, County of Los Angeles, State of California.

### III.

That on or about the 12th day of June, 1942, the plaintiff and defendant entered into a Conditional Sales Agreement, a copy of which is hereto attached, marked "Exhibit A" and made a part hereof as though specifically set forth in full herein. That at the time of the execution of said Conditional Sales Agreement defendant delivered to the plaintiff a check in the sum of Fifteen Thousand (\$15,000.00) Dollars, as provided therein, and at said time it was specifically understood and agreed by and between the plaintiff and defendant that if this Conditional Sales Agreement was not ratified and approved by the Board of Directors of de-

fendant corporation as well as authorize the execution of the notes as provided in said Agreement, and the defendant so notified the plaintiff within the ten (10) days thereafter by telegraph addressed to the plaintiff at 6200 Avalon Boulevard, Los Angeles, California, and confirmed by letter, Registered Mail, of the same date, then and in such event the fifteen thousand dollars paid to the plaintiff upon the execution of the Agreement, as therein provided, would be returned to the defendant, as well as the copy of said Agreement so executed by the President of defendant corporation on its behalf on or about said 12th day of June, 1942, and further understood and agreed that defendant's executed copy of said Agreement would be mailed to Cromwell, Greist & Warden, Chicago, Illinois, who plaintiff was informed were the attorneys for the defendant corporation, as escrow holder, with instructions to the effect they be authorized to deliver said contract to the defendant at any time within ten (10) days upon their forwarding to plaintiff, duly executed by the defendant, the eighteen (18) promissory notes referred to in said Agreement, as well as a certified copy of the resolution of the Board of Directors of defendant corporation ratifying and approving the act of the President in executing said Agreement for and on behalf of the defendant, also authorizing the execution and delivery of said eighteen (18) notes as specifically provided in said conditional sales agreement. It was also at that time understood and agreed by and between plaintiff and defendant that if the sale as provided in said Conditional Sales Agreement was consummated and

plaintiff entitled to retain the fifteen thousand dollars on or about the 12 day of June, 1942, paid to the plaintiff as provided for in said Conditional Sales Agreement and as part of the consideration for the execution of said agreement, the plaintiff would cause to be executed in favor of defendant options to purchase the twelve hundred (1200) shares of the stock of defendant corporation owned by the plaintiff or by Leo M. Harvey or Ben Weingart, which options if given would be executed by the record owner of said stock, which would be either the corporation or said Leo M. Harvey or Ben Weingart, all as more fully appears from the written document which plaintiff on or about said 12th day of June, 1942, executed and delivered to the defendant, a copy of which is hereto attached and marked "Exhibit B" and made a part hereof as though specifically set out herein.

#### IV.

That pursuant to said understanding and agreement, as above described and particularly set forth in said "Exhibit B," Harold Larson, the Secretary of and attorney for the plaintiff corporation, did forward to said Cromwell, Greist & Warden, on or about said 12th day of June, 1942, an executed copy of the Conditional Sales Agreement so executed on or about the 12th day of June, 1942, as aforesaid, which Agreement, however, bore date the 10th day of June, 1942, also forwarded with said Agreement to said escrow holder eighteen (18) unexecuted promissory notes, being the promissory notes which if the Conditional Sales Agreement was to become opera-

tive would be executed by the defendant and delivered to the plaintiff, as particularly set forth in said Conditional Sales Agreement. That said documents were forwarded to said Cromwell, Greist & Warden by said Harold Larson under written instructions, a copy of which is hereto attached and marked "Exhibit C" and made a part hereof as though specifically set out and embodied herein, under which written instructions said escrow holder was authorized to deliver said executed Agreement to the defendant, provided said escrow holder had within ten days delivered to the plaintiff the eighteen (18) unexecuted promissory notes forwarded to said escrow holder, as above set forth, duly executed by the defendant corporation, a certified copy of the resolution of the Board of Directors of the defendant corporation ratifying and approving the action of the President in executing said Conditional Sales Agreement on its behalf and authorizing the execution on behalf of the defendant corporation of said eighteen notes. That within the said ten days as provided in said escrow instructions, said escrow holder did forward to the plaintiff the eighteen notes executed by the defendant corporation and a certified copy of the resolution of the Board of Directors of the defendant corporation ratifying and approving the action of the President in executing said Conditional Sales Agreement and authorizing the execution on behalf of the defendant corporation of said eighteen notes. That upon the receipt of said notes, duly executed, as aforesaid, and the certified copies of

the resolutions, as aforesaid, plaintiff cashed the defendant's fifteen thousand dollar check theretofore on or about the 12th day of June, 1942, given to it by the President of the defendant corporation at the time of the execution of said Conditional Sales Agreement, as above set forth, and did thereafter cause Leo M. Harvey and Ben Weingart, the record owners of the twelve hundred (1200) shares of stock of defendant corporation, above referred to and as particularly set out in "Exhibit B," to execute and cause to be delivered to the defendant the option to purchase said twelve hundred (1200) shares of stock, all as set forth in said "Exhibit B." The original of said "Exhibit B" was delivered to the defendant on or about the 12th day of June, 1942, by delivering the same to Leo J. Hulsman, its President, at the time he, on behalf of the defendant corporation, executed said Conditional Sales Agreement marked "Exhibit A."

## V.

That pursuant to the terms of said Conditional Sales Agreement so executed on or about the 12th day of June, 1942, although dated the 10th day of June, 1942, which became operative and binding on both the parties thereto upon the ratification and approval thereof by the Board of Directors of the defendant corporation as confirmed by the certified copy of the resolution forwarded to plaintiff, as above set forth, plaintiff agreed to sell and defendant agreed to buy six (6) completed machines designed for the manufacture of one piece pleated paper cups, together with three sets of

dies, which machines were at the time of the execution of said Agreement located in plaintiff's place of business at 6200 Avalon Boulevard, Los Angeles, California, which machines had prior to the execution of said agreement been inspected by the buyer and accepted in the condition they then were, subject only to the warranties made by the plaintiff as set forth in said Agreement, being "Exhibit A," for the total sum of Sixty Thousand (\$60,000.00) Dollars, fifteen thousand (\$15,000.00) dollars upon the execution of the Agreement, which sum was represented by the fifteen thousand dollar check given by the defendant to the plaintiff upon the execution of said agreement and which check, pursuant to the understanding and agreement of the parties, as confirmed by said "Exhibit B," was to be returned to the defendant if the Board of Directors of said defendant corporation did not ratify and approve the action of the President in execution said agreement within the time and in the manner as set forth in said "Exhibit B" and "Exhibit C," fifteen thousand (\$15,000.00) Dollars to be evidenced by the eighteen (18) promissory notes herein referred to and particularly set forth in each of the exhibits hereto attached, and Thirty Thousand (\$30,000.00) Dollars to be evidenced as follows:

(1) A sum equal to five cents (5c) for each one thousand (1,000) souffle cups produced on such machines that are sold by the Buyer at the net price of One (\$1.00) Dollar or more per thousand (1,000); and

(2) A sum equal to five per cent. (5%) of the Buyer's net selling price on souffle cups produced on such machines that are sold by the Buyer at the net price of less than One (\$1.00) Dollar, and more than fifty cents (50c) per thousand; and

(3) A sum equal to one per cent. (1%) on any souffle cups sold by Buyer at the net price of fifty cents (50c) per thousand or less; and

(4) A sum equal to five cents (5c) per thousand for each one thousand (1,000) drinking cups, or other contains other than souffle cups produced on such machines that are sold by Buyer at the net price of One (\$1.00) Dollar, or more, per thousand; five per cent. (5%) of the net selling price when sold at a price of less than One (\$1.00) Dollar per thousand but at a price of ninety (90c) cents or more, and one per cent. (1%) of the net selling price when sold for less than ninety (90c) cents per thousand;

said sum so payable to be paid on or before the 10th day of the month following the month in which the cups were produced and in the event said payments do not amount to the sum of Thirty-six Hundred (\$3600.00) Dollars for any successive twelve (12) month period, beginning September 1, 1942, then and in that event on or before the 20th day of the month following said twelfth month of each year the defendant should pay such sum as said payments made for said twelve months period were less than the sum of Thirty-six Hundred

(\$3600.00) Dollars, until such a time as said Thirty Thousand (\$30,000.00) Dollars should have been fully paid.

## VI.

That said machines and dies covered by said Conditional Sales Agreement were delivered to the defendant within the time and manner as provided for in said Conditional Sales Agreement, and defendant paid the Fifteen Thousand (\$15,000.00) Dollars upon the execution of the Agreement, as above set forth, executed the eighteen (18) promissory notes as set forth in said Agreement aggregating the sum of Fifteen Thousand (\$15,000.00) Dollars, which notes have also been paid, and on account of said last Thirty Thousand (\$30,000.00) Dollars of said purchase price to be payable as above set forth defendant has paid the following sums, and no more:

The Thirty-six hundred (\$3600.00) dollars minimum for the year ending August 31, 1943; the Thirty-six hundred (\$3600.00) dollars minimum for the year ending August 31, 1944; and Five Hundred Twenty-six and 72/100 (\$526.72) Dollars on account of the minimum thirty six hundred dollars due for the year ending August 31, 1945, leaving now unpaid the sum of Three Thousand Seventy-three and 28/100 (\$3,073.28), being the balance of the minimum due and payable for the year ending August 31, 1945; Thirty-six Hundred (\$3600.00) Dollars, being the minimum for the year ending August 31, 1946, and Thirty-six Hundred (\$36.00.00)

Dollars, being the minimum for the year ending August 31, 1947 and Thirty-six Hundred (\$3600.00) Dollars, being the minimum for the year ending August 31, 1948, making a total of Thirteen Thousand Eight Hundred Seventy-three and 28/100 (\$13,873.28) Dollars now past due, no part of which has been paid.

### VII.

That demand has been made on the defendant for the payment of said sum of Thirteen Thousand Eight Hundred Seventy-three and 28/100 (\$13,873.28) Dollars, but the defendant has failed, neglected and refused, and still fails, neglects and refuses to pay said sum, or any part thereof, and the whole thereof is still due, owing and unpaid.

### VIII.

Wherefore, plaintiff prays judgment against the defendant for the sum of Thirteen Thousand Eight Hundred Seventy-three and 28/100 (\$13,873.28) Dollars, together with such other additional sums as may become due and payable under said Conditional Sales Agreement subsequent to the filing hereof, together with interest at the rate of seven per cent. (7%) on said respective installments from the due date, for costs of suit, and such other and further relief as to the Court may seem meet.

Dated this 20th day of June, 1949.

/s/ HAROLD LARSON,

Attorney for Plaintiff.

## Exhibit B

Harcraft Co.

6200 Avalon Boulevard

ADams 6206

Los Angeles, California

June 12, 1942

Paper Container Manufacturing Co.,  
1752 East 75th Street,  
Chicago, Illinois.

Dear Sirs:

Simultaneously herewith your President has executed on your behalf a conditional sales contract wherein you are designated as the Buyer and we are designated as the Seller, and given us a check for \$15,000.00, as provided for therein.

If this contract is not ratified and approved by your Board of Directors, as well as the execution of the notes as provided for therein, it is our understanding you may, at any time within ten (10) days from the date hereof so advise us by telegraph, addressed to the undersigned at 6200 Avalon Boulevard, Los Angeles, California, and confirmed by letter, Registered Mail, of the same date, so notify us, in which event said \$15,000.00 shall forthwith be returned to you, as well as the copy thereof executed by your President.

It is our further understanding that we are executing a copy of said agreement which is being mailed to Cromwell, Greist & Warden, as escrow holders, with instructions to the effect that they

are authorized to deliver said contract to you any time within ten days, upon their forwarding to us, duly executed by your Company, the eighteen (18) promissory notes referred to in said agreements, which notes so to be executed are being forwarded to them simultaneously with said contract, and forward to us a certified copy of a resolution adopted by your Board of Directors, at a meeting duly and regularly held, ratifying and approving the act of the President in executing said agreement for and on your behalf, and authorizing the execution and delivery of said eighteen notes. The form of said proposed resolution is also being forwarded to said escrow holder.

This is also to confirm our understanding which is that if the purchase of said six machines specified in said agreement is consummated and said machines shipped, and we entitled to retain the \$15,000.00 this day paid, as provided for in said agreement, then and in such event we will immediately thereafter forward you an option or options to purchase the twelve hundred (1200) shares of your stock owned by the undersigned, or Leo M. Harvey or Ben Weingart, upon the same terms and conditions as that certain option given and granted you under the agreement entered into between us on the 9th day of December, 1941, which said option or options will be executed by the record owner of said stock, which

may be either the undersigned, or said Harvey or Weingart.

Very truly yours,

HARCRAFT CO.

By LEO M. HARVEY,  
President.

Exhibit C

Law Offices Harold Larson  
814-816 Central Building  
Los Angeles 14  
TRinity 1196

June 12, 1942.

Cromwell, Greist & Warden,  
Attorneys at Law,  
First National Bank Bldg.,  
Chicago, Illinois.

In re: Paper Container—Harcraft Co.

Dear Sirs:

By the time you receive this, I presume Mr. Hulseman will have returned to Chicago and informed you how the deal has been handled and has shown you the letter which we executed and delivered to him confirming our understanding.

Pursuant to our verbal understanding with Mr. Hulseman, I am enclosing herewith an executed copy of the conditional Sales Agreement dated the 10th day of June, 1942, between Paper Container Manufacturing Co., as buyer and Harcraft Co., as seller, which agreement has been duly executed by Leo

J. Hulseman, as President, on behalf of Paper Container, and by Leo M. Harvey, as President and Harold Larson, as Secretary, on behalf of Harcraft Co. I am also enclosing herewith 18 unexecuted promissory notes, also for certification a proposed resolution to be adopted by the Board of Directors of Paper Container ratifying and approving the action of the President in executing said agreement, and authorizing the execution on behalf of the Company of the eighteen notes by either the President or Secretary.

This executed agreement is being forwarded you as escrow holder and you are authorized to deliver the same to Paper Container Co. within ten days, provided prior to such delivery to it of said agreement you have delivered to us the 18 notes duly executed on behalf of Paper Container by the officer or officers so authorized to do under the resolution adopted by the Board, and deliver to us a certified copy of the resolution in the form enclosed herewith for such certification.

These are forwarded you upon the express understanding that if the instructions are not complied with within ten days from this date, then and in that event we have the absolute right to at any time thereafter demand and be entitled to the return to us of said executed agreement enclosed herewith.

I believe the letter executed by Mr. Harvey on behalf of Harcraft Co. addressed to Paper Container which was delivered to Mr. Hulseman, clearly sets forth the mechanics under which we are proposing to close the deal.

You might call Mr. Hulseman's attention to the fact that in the rush of preparing a copy of the agreement so executed for him to take with him I believe we overlooked changing the dates appearing in lines 6 and 7 on page 2 to conform to the changes made in the executed copy.

Kindly acknowledge receipt of the enclosures.

Very truly yours,

HAROLD LARSON.

HL:E

Exhibit A  
Conditional Sales Agreement

This Agreement, made and entered into at Los Angeles, California, this 10th day of June, 1942, by and between Paper Container Manufacturing Co., hereinafter referred to as Buyer, and Harcraft Co., a California corporation, hereinafter referred to as Seller:

Now, Therefore, in consideration of the mutual covenants herein contained the parties do hereby covenant and agree as follows:

I.

Seller hereby agrees to sell and Buyer agrees to buy from the Seller six (6) completed machines designed for the manufacturing of one piece pleated paper cups, together with three sets of dies, which machines are now located at Seller's place of business at 6200 Avalon Boulevard, Los Angeles, California, and have been inspected by the Buyer and accepted by him in the condition they now are, sub-

ject, however, to the warranties made by the Seller as hereinafter set forth, upon the terms and conditions hereinafter set forth.

## II.

### Consideration

As purchase price for said machines, Buyer shall pay to the Seller the sum of Thirty Thousand (\$30,000.00) Dollars (with interest on deferred payments as hereinafter provided) as hereinafter in subsection (A) of this paragraph provided, plus the additional payments as hereinafter in subsection (B) provided.

(A) The Thirty Thousand (\$30,000.00) Dollars shall be payable as follows:

#### Mode of Payment

Fifteen Thousand (\$15,000.00) Dollars upon the execution of this Agreement, the receipt whereof is hereby acknowledged; balance of said Thirty Thousand (\$30,000.00) Dollars, to wit, Fifteen Thousand (\$15,000.00) Dollars, together with interest on deferred payments, shall be payable Eight Hundred Thirty-three (\$833.33) Dollars on the 1st day of August, 1942, and a like sum on or before the 1st day of each and every month thereafter until said Fifteen Thousand (\$15,000.00) Dollars, together with interest on deferred payment shall have been fully paid.

#### Notes and Interest

Said Fifteen Thousand (\$15,000.00) Dollars bal-

ance of said Thirty Thousand (\$30,000.00) Dollars, payable as above set forth, shall be evidenced by promissory notes payable and bearing interest as follows: Eighteen (18) serial notes, in the form hereto attached, each for \$833.33, dated as of this date, bearing interest at the rate of five per cent. (5%) per annum from June 15, 1942, until paid, first of said notes to become due and payable on August 1st, 1942, and one thereof due and payable on the 1st day of each and every month thereafter until January, 1944, when the last of said notes shall become due and payable.

#### Additional Consideration

(B) The additional payments to be paid by the Buyer, irrespective of who may be making said cups on said machines, whether it be the Buyer, an affiliated or subsidiary company, associates or other persons, firms or corporations, shall be and be payable as follows:

(1) A sum equal to five cents (5c) for each one thousand (1000) souffle cups produced on such machines that are sold by the Buyer at the net price of One (\$1.00) Dollar or more per thousand (1,000); and (2) A sum equal to five per cent. (5%) of the Buyer's net selling price on souffle cups produced on such machines that are sold by the Buyer at the net price of less than One (\$1.00) Dollar, and more than fifty cents (50c) per thousand; and (3) A sum equal to one per cent. (1%) on any souffle cups sold by Buyer at the net price of fifty cents

(50c) per thousand or less; and (4) A sum equal to five cents (5c) per thousand for each one thousand (1,000) drinking cups, or other containers other than souffle cups produced on such machines that are sold by Buyer at the net price of One (\$1.00) Dollar, or more, per thousand; five per cent. (5%) of the net selling price when sold at a price of less than One (\$1.00) Dollar per thousand but at a price of ninety (90c) cents or more, and one per cent. (1%) of the net selling price when sold for less than ninety (90c) per thousand.

### Reports

Sums payable on the basis of cup production shall be reported and paid each month on or before the twentieth (20th) day of the month next following the month in which the cups are produced. Reports shall be verified and shall show the total number of cups or containers that were manufactured on said machines and sold during the month covered by the report and the net prices at which the same were sold.

### Annual Minimums

The monthly payments covering said additional payments shall be made and continue in full force and effect until the additional sum of Five Thousand (\$5,000.00) Dollars as to each of said six machines, making a total of Thirty Thousand (\$30,000.00) Dollars shall have been fully paid, and in the event said additional payments made do not amount to the sum of Thirty-six Hundred (\$3600.00) Dollars for any successive twelve month period, beginning

September 1, 1942, then and in that event on or before the twentieth day of the month following said twelfth month of each year, the Buyer shall pay to the Seller such sum, if any, as said payments made covering said twelve month period are less than the sum of Thirty-six Hundred (\$3600.00) Dollars.

If because of war, strike or other cause beyond Buyer's control, the Buyer is prevented from operating one or more of said machines, then and in that event there shall be a proportionate adjustment and postponement in part in said minimum payments to be paid as provided in this paragraph; irrespective of any adjustment or postponement, however, the total sum of Thirty Thousand (\$30,000.00) Dollars shall be payable as herein provided, except as to such postponement in part, as herein-before provided.

### III.

#### Warranty

(a) Each machine is guaranteed against defect in material and workmanship for a period of ninety (90) days. Seller's liability is hereby strictly limited to replacing broken or defective parts. Delivery of said parts to a carrier consigned to Buyer, shall be full and complete compliance of this promise to replace such parts. Special damages are not within the contemplation of the parties and Buyer shall not be liable therefor under any circumstances.

(b) Failure of Seller to promptly and expeditiously repair or replace defective parts and furnish all necessary parts to repair defective parts

on request of Buyer, then Buyer may make such repairs or replacements and deduct the cost thereof from payments due the Seller, during 90-day guarantee period.

(c) In case of defect due to inferior material or workmanship discovered, and Seller given written notice thereof, during said 90 day period, the length of said warranty and guarantee period shall be extended by such time as any machine shall be inoperative because of such defect.

### Title

Provided Buyer has theretofore, strictly at the time and in the manner herein provided, complied with all the terms, covenants and conditions on its part to be kept and performed under the provisions of paragraph II hereof as to each machine agreed to be purchased hereunder, then and in that event when Buyer shall have paid to the Seller the total sum of Sixty Thousand (\$60,000.00) Dollars, as provided for in subsections (A) and (B) of paragraph II hereof, the Buyer shall thereupon receive complete title to all machines sold it hereunder.

It is expressly understood and agreed that legal title to said machines, and each of them, shall at all times until Buyer may become the legal owner as hereinbefore provided remain in the Seller, and that the Buyer's right to the continued possession and use of said machines, and each of them, in the meantime, is conditioned upon Buyer complying with all the terms, covenants and conditions hereof

strictly at the time and in the manner as herein set forth, and upon default by the Buyer in the performance of any of the terms, covenants and conditions on its part to be kept and performed, strictly at the time as herein set forth, the Buyer shall have no further right to the use or possession of any of said machines, and in such event the Seller shall become entitled to the immediate possession of each and all of said machines. As to any defaults hereunder, other than the payment of moneys, the Buyer shall have thirty (30) days after written notice sent to it by Registered Mail at its address as hereinafter set forth, to remedy such default, and as to the payment of any moneys, ten (10) days after like notice.

## V.

### Manufacturing Rights

(A) Buyer is hereby given the right for a period of 8 years from and after the date hereof to manufacture additional machines of the same or substantially the same type or character as those simultaneously sold to it, conditioned, however upon:

Buyer in writing notifying Seller of its intention to immediately commence the manufacture of such machines, designating the number contemplated being built and simultaneously therewith paying the Seller Five Hundred (\$500.00) Dollars as to each machine so to be built, and immediately upon the completion of each of said machines giving the Seller written notice of the number and date of each of said machines completed, and by thereafter pay-

ing the Buyer the further sum of Forty-five Hundred (\$4500.00) Dollars as to each machine so completed, which sum shall be payable in twenty-four (24) equal monthly installments, with the first of said monthly payments to be due and payable thirty (30) days after completion of the respective machines. In the event, however, of Buyer's failure to either give Seller written notice of its intention to manufacture said machines and the number thereof, or failure to make the \$500.00 payment at the time and manner herein provided, or failing, on completion of each of said machines, to give Seller said written notice of completion thereof, the total sum of Five Thousand (\$5,000.00) Dollars as to each machine so completed shall become immediately due and payable upon the completion thereof.

(B) The Buyer did heretofore, on or about the 6th day of Dec., 1939, purchase from the Seller five (5) cup machines somewhat similar but not identical with the machines hereby purchased, and it is expressly understood and agreed that the Buyer is hereby given the right to manufacture additional machines substantially of the type and character of said five machines so heretofore sold it, conditioned, however upon:

Buyer in writing notifying Seller of its intention to immediately commence the manufacture of such machines, designating the number contemplated being built and simultaneously therewith paying the Seller Five Hundred (\$500.00) Dollars as to each machine so to be built, and immediately upon the

completion of each of said machines giving Seller written notice of the number and date of each of said machines completed, and by thereafter paying the Buyer the further sum of Two Thousand (\$2,000.00) Dollars as to each machine so completed, which sum shall be payable in twenty-four (24) equal monthly installments with the first of said monthly payments to be due and payable thirty (30) days after completion of the respective machines. In the event however, of Buyer's failure to either give Seller written notice of its intention to manufacture said machines and the number thereof, or failure to make the \$500.00 payment at the time and manner herein provided, or failing on completion of each of said machines, to give Seller said written notice of completion thereof, the total sum of Two Thousand (\$2,000.00) Dollars as to each machine so completed shall become immediately due and payable upon the completion thereof.

(C) It is expressly understood and agreed that in the event the Buyer should manufacture or use any machine, even though not substantially of the type or character, or embodying any of the principles of either the machines now or hereafter sold by it by the Seller hereunder, which makes a one piece pleated paper cup, then and in such event as to any such machines so made or used by it, within a period of five (5) years from the date hereof, it shall pay to the Seller like sums as it is obligated herein under the provisions of subsection (A) of this paragraph V to pay to the Seller, with the first \$500.00 installment thereof to become due and pay-

able upon the commencement of the use thereof. The provisions of this subsection (C) shall in no way limit the period of effectiveness of subsections (A) and (B).

## VI.

### Term

This agreement shall continue in full force and effect until the seller has been paid all moneys hereinbefore under the provisions of subsections (A) and (B) of paragraph II and each of the subsections of paragraph V hereof, but in no event beyond a period of twelve (12) years, provided, however, in the event of a default or breach on the part of the Buyer of any of the terms, covenants and conditions on its part to be kept and performed hereunder, then and in that event the Seller shall have the right, privilege and option of terminating this agreement upon thirty days written notice, unless such default or breach has been remedied within said thirty days, which remedy shall be in addition or cumulative to any other remedy Seller may have.

## VII.

Time is of the essence of this agreement.

## VIII.

### Location Notices

It is expressly understood and agreed that the Buyer shall, in writing, within thirty (30) days after the delivery of each of said machines, notify the Seller the State, County, City and Street ad-

dress where each of said machines is in use, and if said machines are thereafter removed from said location the Buyer shall, likewise, within thirty (30) days thereafter give Seller like written notice, it being the intent of the parties hereto that the Seller shall at all times be fully informed as to the location of said machines in use.

## IX.

### Assignment

Buyer specifically agrees not to assign or attempt to assign any of its rights acquired hereunder in or to said machines, excepting in the event that said assignee, in writing, furnished Seller, agrees to be bound by, keep and perform all the terms, covenants and conditions on the Buyer's part to be kept and performed hereunder with the same force and effect as though said assignee had been designated as the original Buyer herein, and provided, further, however, that in no event shall Buyer, named herein, without Seller's written consent, be released or relieved from its obligation in the performance on the part of the Buyer of all the terms, covenants and conditions on Buyer's part to be kept and performed hereunder. Any attempted assignment contrary to the foregoing provision shall be void and of no force and effect.

## X.

This agreement shall be binding on and inure to the benefit of the successors in interest or assigns

of the parties hereto, subject to the limitations hereinbefore set forth to the Buyer.

## XI.

### Taxes

Buyer agrees to pay any and all taxes, levies, assessments and excises that may be required from time to time by any State or the Federal Government or any of their respective political subdivisions thereof on the lease and use of said cup making machines and the manufacture, sale, vending and leasing of the paper cups manufactured.

## XII.

### Right of Inspection

It is expressly understood and agreed that a duly elected officer of the Seller may semi-annually at a time convenient to Seller and on its behalf, during the full term of this Agreement, enter into the plant and works of the Buyer where said machines are located for the purpose of checking and determining the number of machines for which payment should be made to the Seller hereunder which Buyer may have in operation or in its possession.

## XIII.

Buyer agrees not to dispute or question the validity of United States Letters Patent which may be issued to the Seller on said cup machines or any part thereof, during the term of this agreement.

## XIV.

Buyer specifically promises and agrees that it will not directly or indirectly deliver to any foreign country or exhibit or publish in any foreign country said machines thereof in whole or in part, or in any manner that may jeopardize Seller's rights to patents in such foreign countries, or permit anyone else to copy said machines.

## XV.

## Infringement Suits

Should any third party commence suit against Buyer, claiming that Seller's cup manufacturing machines infringe any U. S. Patent owned by them, then and in that event, the cost of defending such suit for infringement shall be borne equally by the Seller and Buyer, which action, however, shall be defended by Cromwell, Greist & Warden, or such other attorneys as the parties hereto may mutually agree upon. In the event in any such infringement action the Buyer is enjoined by a Court of competent jurisdiction from using said machines, then and in that event it is expressly understood and agreed that the due date of any payments becoming due and payable hereunder during such period as Buyer is so enjoined from using said machines, together with all payments thereafter becoming due hereunder shall be extended and no interest shall accrue on said notes for a period equal to that which Buyer is so enjoined from using said machines. This, however, shall in no way modify or change the prin-

cipal amounts to be paid, but only extend the date of payment, as hereinbefore provided, as to payments becoming due hereunder subsequent to the issuance of such injunction.

## XVI.

### Delivery

Delivery shall be f. o. b. common carrier Los Angeles, California, for shipment to Buyer's place of business at Chicago, Illinois, and be made at the time and in the manner hereinafter provided, but in no event until after Buyer has executed and delivered to the Seller the 18 notes provided for in subsection (A) of paragraph II hereof.

## XVII.

### Acceleration

In the event of Buyer's failure to make any payments promptly at the time and in the manner provided as to any of said notes and as therein provided, and such default is not remedied within ten (10) days, after written notice served on or mailed to the Buyer, as herein otherwise provided, then and in that event the Seller, at its option, may declare due and payable forthwith any unpaid portion of the Thirty Thousand (\$30,000.00) Dollars hereinbefore in subsection (A) of paragraph II referred to which may be evidenced by promissory notes as provided for in subsection (A) of paragraph II.

## XVIII.

All negotiations and representations heretofore made in connection herewith are merged herein and no oral representations are at any time to be claimed by any of the parties hereto in modification or variation of this agreement and it is understood and agreed between the parties hereto that all claims shall be invalid if asserted by either of the parties hereto.

## XIX.

It is expressly understood and agreed that each and every term or provision of this agreement is several and that the invalidity of any one particular portion or paragraph shall in no way affect the remainder of this agreement.

## XX.

The words "Seller" and "Buyer" herein shall be applicable to one or more parties, as the case may be and the singular include the plural and the masculine include the feminine and neuter.

## XXI.

Upon Buyer notifying Seller, as hereinbefore provided, of its intention to itself manufacture any machines under the rights hereinbefore granted, then and in such event, within five days after the receipt of such notice, the Seller shall ship to the Buyer unless it has previously done so, a set of blueprints necessary to enable it to proceed with the manufacture of such machines. Seller, however, shall not be obligated to at any time furnish Buyer

with additional copies of any prints theretofore furnished it.

## XXII.

In the event it is necessary to obtain a priority certificate or other authorization for the sale and purchase under and pursuant to W. P. B. Order L-83, then and in that event it is expressly understood and agreed that said machines shall not be shipped prior to such a time as such priority certificate or other authorization is received, but shall be shipped within five days after receipt thereof, and if priority certificate or other authorization is not required, then to be shipped within five days after definitely ascertaining said authorization or certificate is not required, then and in that event said \$15,000.00 paid upon the execution hereof shall be held in trust by the Buyer until such certificate or authorization above referred to shall have been obtained and the sale and delivery can be consummated without violation of any legal requirement. In the event said machines are not shipped within twenty days from and after the date hereof for any cause, then and in that event the Buyer, may, at its option, at any time thereafter, terminate and cancel this contract, and upon such termination and cancellation the \$15,000.00 so paid shall forthwith be returned to the Buyer, and in the event that said certificate or authorization is not obtained within twenty days from and after the date hereof, then and in that event the Seller may, likewise, at any time thereafter at its option terminate and cancel

this contract by returning to the Buyer said Fifteen Thousand (\$15,000.00) Dollars. In the event of the termination and cancellation of this contract by either of the parties, as hereinabove set forth, it shall become null and void and of no force and effect.

### XXIII.

#### Notices

Any notices to be given or served by either of the parties on the other, as herein set forth, may be served in the following manner:

As to the Seller: By either personally serving it on an officer of the Corporation, or by sending by United States Mail, Registered, Postage prepaid, addressed to it at 6200 Avalon Boulevard, Los Angeles, California, or such other address as the Seller may from time to time designate.

As to the Buyer: By either personally serving it on an officer of the Corporation, or by sending by United States Mail, Registered, Postage prepaid, addressed to it at 1752 East 75th Street, Chicago, Illinois, or such other address as the Seller may from time to time designate.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, and

their respective corporate seals hereunto affixed, all the day and year hereinabove first written.

PAPER CONTAINER  
MANUFACTURING CO.

By LEO J. HULSEMAN,  
Pres.

By .....  
Sec'y.  
Buyer.

HARCRAFT CO.

By LEO M. HARVEY,  
Pres.

By HAROLD LARSON,  
Sec'y.  
Seller.

State of California,  
County of Los Angeles—ss.

On this 12th day of June, A.D. 1942, before me, Margaret S. Evans, a Notary Public in and for said County and State, personally appeared Leo J. Hulseman, President, known to me to be the President of the Paper Container Manufacturing Co., the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my

hand and affixed my official seal the day and year  
in this certificate first above written.

[Seal] MARGARET S. EVANS,  
Notary Public in and for  
Said County and State.

State of California,  
County of Los Angeles—ss.

On this 12th day of June, A.D. 1942, before me, Margaret S. Evans, a Notary Public in and for the said County and State, personally appeared Leo M. Harvey known to me to be the President, and Harold Larson, known to me to be the Secretary of the Harcraft, Inc., the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

MARGARET S. EVANS,  
Notary Public in and for  
Said County and State.

State of California,  
County of Los Angeles—ss.

Leo M. Harvey being by me first duly sworn, deposes and says: that he is the President of Harcraft Co., a corporation, plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; and

that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ LEO M. HARVEY.

Subscribed and sworn to before me this 24th day of June, 1949.

[Seal] LORETTA TEEGAN,  
Notary Public in and for Said County and State of California.

My commission expires Oct. 1, 1951.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 14, 1950.

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In the United States District Court for the Southern District of California, Central Division  
No. 11432-Y

HARCRAFT CO., a Corporation,

Plaintiff,

vs.

PAPER CONTAINER MANUFACTURING CO.,  
a Corporation,

Defendant.

NOTICE OF FILING OF PETITION FOR  
REMOVAL AND BOND UPON REMOVAL

To the Above-Named Plaintiff and to Harold Larson, Its Attorney:

You will please take notice that on the 14th day of April, 1950, the defendant herein, Paper Container Manufacturing Co., a corporation, filed in the Office of the Clerk of the United States District Court for the Southern District of California, Central Division, a Petition for Removal and a Bond Upon Removal, copies of which said Petition and Bond are served upon you concurrently herewith; and thereafter, on April 14, 1950, this defendant further filed a copy of said Petition for Removal with the Clerk of the Superior Court of the State of California in and for the County of Los Angeles.

Said Petition for Removal was made upon the grounds that said cause is one over which the United States District Court has original jurisdiction; that the amount in controversy is in excess of the sum of Three Thousand Dollars (\$3,000.00), exclusive of interest and costs; and that the controversy is one existing only between citizens of different states, to wit, between the plaintiff herein, a citizen and resident of the County of Los Angeles, State of California, and this defendant herein, a corporation organized and existing under and by virtue of the laws of the State of Illinois and a citizen and resident of the State of Illinois.

HENRY F. PRINCE,

FREDERIC H. STURDY,

By /s/ FREDERIC H. STURDY,  
Attorneys for Defendant, Paper Container Manufacturing Co.

GIBSON, DUNN & CRUTCHER.

By /s/ FREDERIC H. STURDY,  
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 14, 1950.

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[Title of District Court and Cause.]

#### SUBSTITUTION OF ATTORNEYS

Paper Container Manufacturing Co., a corporation, the defendant in the above-entitled action, does hereby substitute Messrs. Sheppard, Mullin, Richter & Balthis, 458 South Spring Street, Los Angeles 13, California, as its attorneys in said action, in the place and stead of Messrs. Gibson, Dunn & Crutcher.

Dated: May 24th, 1950.

**PAPER CONTAINER  
MANUFACTURING CO.**

By /s/ ROBERT McHUGH,  
Secretary.

The undersigned hereby consents to the foregoing Substitution of Attorneys.

Dated: May 29, 1950.

GIBSON, DUNN & CRUTCHER.

By /s/ FREDERIC H. STURDY.

The undersigned hereby accept the foregoing  
Substitution of Attorneys.

Dated: May 31, 1950.

SHEPPARD, MULLIN,  
RICHTER & BALTHIS, and

/s/ CAMERON W. CECIL.

[Endorsed]: Filed June 2, 1950.

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[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

Harold Larson, Esq. and Messrs. Fleming, Robbins & Tinsman are hereby substituted as attorneys for plaintiff in the above-entitled proceeding in the place and stead of Harold Larson.

Dated this 31st day of May, 1950.

HARCRAFT CO.,  
A Corporation.

By /s/ HAROLD LARSON,  
Secretary.

I hereby consent to the foregoing Substitution.

Dated this 31st day of May, 1950.

/s/ HAROLD LARSON.

We hereby accept the foregoing Substitution.

Dated this 31st day of May, 1950.

HAROLD LARSON and  
FLEMING, ROBBINS &  
TINSMAN,

By /s/ CLAY ROBBINS.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 2, 1950.

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[Title of District Court and Cause.]

MOTION TO DISMISS AND MOTION FOR  
MORE DEFINITE STATEMENT

To the Plaintiff Above Named and to Messrs. Fleming, Robbins & Tinsman, 210 West Seventh Street, Los Angeles 14, California, Its Attorneys, and to Whomsoever It May Concern:

You and Each of You Will Please Take Notice that the defendant will on Monday, July 17, 1950, at 10:00 a.m. of said day, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Leon R. Yankwich, Judge of the above-named Court, in the Federal Building, Los Angeles, California, move the above-named Court as follows:

I.

Motion to Dismiss

Said defendant moves the Court for an order dismissing the complaint in the above-entitled matter upon the ground that the complaint fails to state a claim upon which relief can be granted for the

reason that the alleged contract sued upon is illegal as being in violation of the Clayton Act (15 U.S.C.A. § 14).

## II.

### Motion for More Definite Statement

Said defendant moves for a more definite statement in the following particulars:

- (a) As to whether the complaint is "for money" as set forth in the title, or for an alleged breach of a conditional sales agreement as alleged in Paragraph III of the complaint.
- (b) As to whether said alleged conditional sales agreement was written or oral.
- (c) As to whether any of the notices required by said alleged conditional sales agreement have been given by the plaintiff to the defendant.

Said motions are made upon the foregoing notice of motion, upon the points and authorities attached hereto, and upon all papers and records on file in the above-entitled action at the time said motions are heard. The defendant requests permission to argue orally the foregoing motions.

Dated: June 27, 1950.

SHEPPARD, MULLIN,  
RICHTER & BALTHIS,

JAMES C. SHEPPARD and

/s/ CAMERON W. CECIL,  
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 28, 1950.

At a stated term, to wit: The February Term A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 24th day of July in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Leon R. Yankwich,  
District Judge.

[Title of Cause.]

### ORDER

For hearing motion of defendant, filed June 28, 1950, (1) to dismiss, and (2) for more definite statement; C. S. Tinsman, Esq., appearing as counsel for plaintiff; C. W. Cecil, Esq., appearing as counsel for defendant;

Court orders cause continued to 2 p.m.

At 2 p.m. court reconvenes herein and all being present as before, including counsel for both sides;  
Attorney Tinsman argues to the Court.

Court orders motion to dismiss granted, and motion for more definite statement is denied; defendant to prepare formal order.

In the District Court of the United States, Southern  
District of California, Central Division

No. 11432-Y

HARCRAFT CO., a Corporation,

Plaintiff,

vs.

PAPER CONTAINER MANUFACTURING CO.,  
a Corporation,

Defendant.

#### JUDGMENT OF DISMISSAL

The defendant's Motion to Dismiss and Motion for More Definite Statement in the above-entitled action, having come on regularly for hearing before the Honorable Leon R. Yankwich, Judge of the above-named Court, in the United States Post Office and Courthouse Building at Los Angeles, California, on July 24, 1950, and the plaintiff having then appeared by Harold Larson, Esquire, and Messrs. Fleming, Robbins & Tinsman and Clifford S. Tinsman, Esquire, its attorneys, and the defendant having then appeared by Cameron W. Cecil, Esquire, of Messrs. Sheppard, Mullin, Richter & Balthis, its attorneys, and said motions having been argued,

Now, Therefore, It Is Ordered, Adjudged and Decreed that the Motion to Dismiss is granted, and the cause be, and the same hereby is dismissed, and

It Is Further Ordered, Adjudged and Decreed that the Motion for More Definite Statement be, and the same hereby is denied.

Dated: July 26, 1950.

/s/ LEON R. YANKWICH,  
Judge.

Approved as to form as required by Rule 7(a):

HAROLD LARSON and  
FLEMING, ROBBINS &  
TINSMAN,

By /s/ CLIFFORD S. TINSMAN,  
Attorneys for Plaintiff.

Received copy of the within Judgment of Dismissal, July 25, 1950.

HAROLD LARSON and  
FLEMING, ROBBINS &  
TINSMAN,

By /s/ CLIFFORD S. TINSMAN,  
Attorneys for Plaintiff.

[Endorsed]: Filed July 26, 1950.

Judgment entered July 27, 1950.

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice is Hereby Given that Harcraft Co., a Corporation, plaintiff above named, hereby appeals to the United States Court of Appeals, for the 9th Circuit, from that portion of the Judgment of Dis-

missal granting motion of defendant Paper Container Manufacturing Co. to dismiss the above-entitled action and dismissing the same, which judgment was entered in this action on the 27th day of July, 1950, in Book 67, Page 274 of Judgments.

Dated: August 24, 1950.

HAROLD LARSON and  
FLEMING, ROBBINS &  
TINSMAN,

By /s/ CLAY ROBBINS,  
Attorneys for Appellant,  
Harcraft Co., a Corp.

[Endorsed]: Filed August 25, 1950.

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

To the Clerk of the Above-Entitled Court:

Appellant, Harcraft Co., a Corporation, hereby designates the following portions of the record in the above-entitled proceeding to be contained in the record on appeal:

1. Summons and Complaint.

2. Order Granting Petition for Removal of Action From the Superior Court of the State of California, in and for the County of Los Angeles, to

United States District Court for the Southern District of California, Central Division.

3. Substitution of Attorneys by plaintiff, dated the 31st day of May, 1950.

4. Substitution of Attorneys by defendant Paper Container Manufacturing Co., dated May 24, 1950.

5. Motion to Dismiss, Motion for More Definite Statement and Memorandum of Points and Authorities in Support Thereof, filed by defendant Paper Container Manufacturing Co., dated June 27, 1950.

6. Plaintiff's Points and Authorities in Opposition to Motion to Dismiss and re Motion for More Definite Statement, dated July 18, 1950.

7. Judgment of Dismissal entered July 27, 1950, in Book 67, Page 274 of Judgments; and

8. Notice of Appeal dated August 24, 1950, filed by plaintiff on August 25, 1950.

Dated: September 1, 1950.

HAROLD LARSON and

FLEMING, ROBBINS &  
TINSMAN,

By /s/ CLAY ROBBINS,  
Attorneys for Appellant.

[Endorsed]: Filed September 2, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 56, inclusive, contain the original Petition for Removal with Summons and Complaint attached; Notice of Filing of Petition for Removal and Bond on Removal; Substitutions of Attorneys for Plaintiff and Defendant; Motion to Dismiss, Motion for More Definite Statement and Memorandum of Points and Authorities in Support Thereof; Plaintiff's Authorities in Opposition to Motion to Dismiss and re Motion for More Definite Statement; Judgment of Dismissal; Notice of Appeal and Designation of Record on Appeal and a full, true and correct copy of Minute Order entered July 24, 1950, which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 26th day of September, A.D. 1950.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 12697. United States Court of Appeals for the Ninth Circuit. Harcraft Co., a Corporation, Appellant, vs. Paper Container Manufacturing Co., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: September 27, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals for the  
Ninth Circuit

No. 12697

HARCRAFT CO., a Corporation,

Appellant,

vs.

PAPER CONTAINER MANUFACTURING CO.,  
a Corporation,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY UPON APPEAL

Comes now the Appellant, Harcraft Co., a Corporation, plaintiff, and files this its statement of points on which it intends to rely on appeal, as follows:

1. That the Court erred in dismissing plaintiff's complaint, on the grounds, that

- (a) Said complaint states a claim upon which relief can be granted against the appellee.
- (b) To invalidate a contract under the provisions of the Clayton Act (15 U.S.C.A. Sec. 14) there must be proof that the effect of the contract or its understanding is that it may substantially lessen competition or create a monopoly. Such contract is not illegal *per se*.
- (c) The complaint seeks to recover delinquent installments due under a purchase contract for machinery. Section C of Paragraph V of the contract is no part of the consideration for the sale of the machinery; has no relation to the obligation for the purchase price. A party will not be allowed to escape just legal undertakings under such circumstances.

Respectfully submitted,

HAROLD LARSON and  
FLEMING, ROBBINS &  
TINSMAN,

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